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December 31, 1979

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**ARIZONA ATTORNEY GENERAL**

The Honorable Bill Swink  
Arizona State Senator  
Senate Wing, State Capitol  
Phoenix, AZ 85007

Re: I79-320 (R79-306)

Dear Senator Swink:

In your letter of November 15, 1979, you asked our opinion as to whether persons serving as justices of the peace will be bound by Article 6, § 22 of the Arizona Constitution if the civil jurisdiction of the justice courts is raised from its current limit of "under one thousand dollars" to \$2,500.00. It is our opinion that the qualifications set forth in Art. 6, § 22 are not applicable to justices of the peace, and thus the proposed change in jurisdictional limits will not affect the current qualifications of justices of the peace.

Art. 6, § 22 provides as follows:

Judges of the superior court, intermediate appellate courts or courts inferior to the superior court having jurisdiction in civil cases of one thousand dollars or more, exclusive of interest and costs, established by law under the provisions of section 1 of this article, shall be at least thirty years of age, of good moral character and admitted to the practice of law in and a resident of the state for five years next preceding their taking office. (Emphasis added.)

At the present time, the jurisdiction of justice courts is limited to amounts under \$1,000 by A.R.S. § 22-201.B. If justice courts are "courts inferior to the superior court . . .

established by law" within the meaning of Art. 6, § 22,<sup>1/</sup> then justices of the justice of peace courts having jurisdiction in civil cases of \$1,000 or more would be required to meet the qualifications set forth in Art. 6, § 22. However, we find that the phrase "courts inferior to the superior court" as referred to in Art. 6, § 22 does not include justice courts.

Historically, the Arizona Constitution provided for a simple court structure: "A supreme court, superior courts, justices of the peace, and such courts inferior to the superior courts as may be provided by law." See Art. 6, § 1 of the Arizona Constitution of 1912. Art. 6 was repealed on November 8, 1960. Art. 6, § 1, as adopted, provides for an "integrated judicial department consisting of a supreme court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law and justice courts." It is clear, then, that a constitutional distinction exists between justice courts and inferior courts. Justice courts were established by the Constitution and the establishment of "courts inferior to the superior courts" was left to the Legislature.<sup>2/</sup>

Other sections of Art. 6 of the Constitution also distinguish between justice courts and "courts inferior to the superior court". Art. 6, § 32, provides, inter alia, for the jurisdiction of the justice courts and inferior courts. It reads, in pertinent part, as follows:

The jurisdiction, powers and duties of courts inferior to the superior court and of justice courts, and the terms of office of judges of such courts and justices of the peace shall be as provided by law. The legislature may classify counties and precincts for the purpose of fixing salaries of judges of courts inferior to the superior court and of justices of the peace.

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1. The use of the word "inferior" in this section does not imply that justice courts are not inferior courts to superior courts in operation.

2. The Arizona Supreme Court has affirmed the view that justices of the peace are constitutional offices. Barrows v. Garvey, 67 Ariz. 202, 193 P.2d 913 (1948); Hugh v. State, 14 Ariz. 429, 130 P. 611 (1913). See Nicol v. Superior Court, 106 Ariz. 208, 473 P.2d 455 (1970).

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The civil jurisdiction of courts inferior to the superior court and of justice courts shall not exceed the sum of two thousand five hundred dollars, exclusive of interest and costs. (Emphasis added.)

Art. 6, § 16 provides for appellate review as follows:

Section 16. The superior court shall have appellate jurisdiction in cases arising in justice and other courts inferior to the superior court as may be provided by law. (Emphasis added.)

Art. 6, § 26 provides for the oath of office, in relevant part, as follows:

The oath of all judges of courts inferior to the superior court and the oath of justices of the peace shall be filed in the office of the county recorder, and the oath of all other justices and judges shall be filed in the office of the Secretary of State. (Emphasis added.)

Accordingly, we find that, since justice courts are not mentioned in Art. 6, § 22 and cannot be construed to be included within the term "courts inferior to the superior court", the qualifications set forth in Art. 6, § 22 do not apply to persons serving as justices of the peace and thus would not pertain if the jurisdictional amount of justice courts is raised to \$2,500.<sup>3/</sup>

Sincerely,



BOB CORBIN  
Attorney General

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3. In Nicol v. Superior Court, Maricopa County, 106 Ariz. 208, 473 P.2d 455 (1970), the Arizona Supreme Court held that A.R.S. § 11-402, which governs the qualifications of persons seeking county offices, applies to persons serving as justices of the peace and indicated that Art. 6, § 22 does not apply to justices of the peace. A.R.S. § 11-402 requires that a person seeking a county office shall be at least 18 years old, a resident of the state, an elector of the county or precinct in which the duties of the office are to be exercised and able to read and write the English language.